

Date: April 24, 1996

Mr. Daniel J. Rondeau
 Director, Office of Civil Rights
 United States Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

BY CERTIFIED MAIL

Re: Title VI Administrative Complaint About Discriminatory Practices of the
 Texas Natural Resource Conservation Commission and City of
 Lubbock, Texas

Dear Mr. Rondeau:

On behalf of the Jackson/Mahon Neighborhood Association (hereinafter, "J.M.N.A."), a grassroots community group organized in Lubbock County, Texas, I am hereby filing this administrative complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (hereinafter, "Title VI") against the State of Texas, acting through the Texas Natural Resource Conservation Commission, (hereinafter, "TNRCC") and also against a municipality, the City of Lubbock, Texas (hereinafter, "Lubbock").

The U.S. Environmental Protection Agency (hereinafter, "E.P.A.") and E.P.A.'s Office of Civil Rights have jurisdiction over this matter because the TNRCC oversees the request, application, receipt, deployment and administration of federal funds from the EPA for environmental protection purposes. The City of Lubbock itself applies, receives and oversees the use of federal funds directly from the EPA for public health and environmental protection purposes, and indirectly receives additional federally-approved funds through the TNRCC for similar purposes.

The J.M.N.A. alleges that both the TNRCC and City of Lubbock discriminate against minority residents of Texas and Lubbock, respectively, by ignoring their environmental protection and public health needs in violation of the Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and its implementing regulations, codified at 40 C.F.R. Part 7 ("Title VI"). The J.M.N.A. further alleges that both the TNRCC and the City of Lubbock have engaged in a pattern of systematic discriminatory conduct through: concealment of information, circumvention of laws, indifference to environmental regulations and responsibilities, and participation in a conspiracy to deny minorities, including minorities and low-income citizens, equal protection of the law. As the TNRCC, the State of Texas and the City of Lubbock receive federal funds from the EPA, they are obligated to comply with Title VI of the 1964 Civil Rights Act, which prohibits discrimination in programs using federal funds. Moreover, President Clinton's February 11, 1994 Executive Order No. 12898, affirms and prescribes the fundamental requirements for Federal agencies to insure that all Federal programs and federally funded agencies are not permitted to further increase the disproportionate burdens of environmental hazards borne by communities of color and low-income neighborhoods.

The J.M.N.A. is comprised of minorities and low-income individuals residing within Lubbock County, Texas. The residents are adversely impacted and will continue to be adversely impacted by emissions from the recently permitted Texas Wilburt Vault Company plant located in Lubbock County. Adverse impacts are caused by exposure to toxic, hazardous and noxious chemicals and wastes associated with operations of the numerous industrial facilities, principally located at the sprawling industrial district in Northeast Lubbock.

The J.M.N.A. members living in affected neighborhoods of the industrial district and other area polluting plants have been adversely exposed to toxic, hazardous and noxious substances through a variety of pathways, including but not limited to: breathing contaminated air, skin exposure from particle fallout and vapors, ingesting contaminated fish, and eating other contaminated foods.

City of Lubbock Created an Industrial District immediately adjacent to Northeast Lubbock Neighborhoods Extensively Populated by People of Color.

The City leaders officially created an industrial development district along the Northeast side of Lubbock and began an aggressive development campaign to encourage industrial progress. City officials were fully aware of densely populated neighborhoods, comprised of disadvantaged minorities, directly adjacent to the planned industrial district. Through use of territorial jurisdictions, deed restrictions, zoning variances, zoning ordinances, tax abatements, utility services and by implementing all possible City planning avenues for economic development the City of Lubbock actively promoted the industrial district's development without attempting to address the problem of densely populated neighborhoods next to the new district. City officials further discriminated against minority populations located in the Northeast by proactively encouraging industrial development away from the more affluent sections of the City where minorities resided in less dense populations.

The Lubbock Mayor and City Council approved establishing the City's Northeast industrial district to be outside the City limits, by reducing the tax burden by payment of an industrial district fee about one-third of the City's normal tax rates inside the City limits, by use of deed restrictions, zoning and by providing utility services to industry. The City of Lubbock promoted economic development through polluting industries such as the refineries but failed to encourage simultaneous development of a protective buffer zone by relocation of adjacent residential neighborhoods away from large polluting plants. The City of Lubbock is chartered under the Constitution of the State of Texas and acts through a City Mayor, City Council and City Manager. The City of Lubbock is responsible for requesting, developing, approving and issuing zoning ordinances, deed restrictions, zoning variances, tax abatements, and all utility services provided by the City of Lubbock to industrial, business and residential customers. As a result of these disparate activities, minorities and disadvantaged persons have suffered and continued to suffer from the present effects of past discrimination.

West Texas Vault Company was granted an Air Quality Standard Special Exemption.

West Texas Vault Company was granted a permit exemption to build a plant that will be used to produce concrete burial vaults. Cement will be delivered to the plant, enclosed in tanker trucks and pneumatically unloaded into a 45-ton silo. Cement is drawn from the silos in an encased screw conveyor that discharges into a weigh hopper that empties into a mixer. Aggregate and sand will be delivered by dump truck and stored in a three-sided enclosure. Aggregate and sand will be transferred by endloader into a hopper. The hopper will feed the mixer by a belt conveyor.

The plant will disperse significant amounts of particulate matter into the neighborhood. Particulate matter is most harmful to the very people that lived in the area, namely children and the elderly. Particulate matter pollution has been identified as a factor contributing to the development of respiratory disease and numerous physical maladies. Indeed, particulate matter pollution has been linked to increased hospital admissions and emergency room visits for respiratory problems. Airborne particulates can damage lung tissue and seriously threaten the health of individuals with chronic respiratory illnesses such as asthma, bronchitis and emphysema. This plant will be located across the street from Cavazos Junior High, a Magnet Program School. Moreover, Jackson Elementary and the Matthew's Learning center are located within blocks of the site.

Disparate Industrial Pollution Impacts and Locations of People of Color Populations: Lubbock County, Lubbock, Texas

Various emissions have bombarded residents living adjacent to and within the proximate vicinity of the polluting facilities. The effects of this pollution disproportionately impacts minority communities and low-income citizens in both Lubbock and Lubbock County.

A recipient shall not use criteria or methods of administering its program which has the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

40 C.F.R. § 7.35 (b) (**emphasis added**).

Thus, under Title VI and the EPA's implementing regulations, programs receiving EPA funds may not be administered in a manner that has the practical effect of subjecting individuals to discrimination based upon race. As set forth below, however, Texas' environmental programs do just that. The complainants allege that the TNRCC, using federal funds, provides environmental protection services that reflect disregard for the environmental protection needs of minorities and poor residents of Texas. In short, TNRCC's provision of environmental protection services discriminate, if not by intent then certainly by effect, against minorities and poor residents of Texas. Complainants further assert that the TNRCC has no persuasive justification for its discriminatory acts and omissions.

Title VI and the federally funded programs of the City of Lubbock's health programs have similar problems and effects. Complainants allege the City of Lubbock, using federal funds, provides health and environmental protection services that reflect disregard for the health and environmental protection needs of its people of color and poor residents. In short, Lubbock's provision of health and environmental protection services discriminate, if not by intent then certainly by effect, against minorities and the poor residents of the City. Complainants further assert that the Lubbock has no persuasive justification for its discriminatory acts and omissions.

C. Evidence of a Title VI Violation

1. Disparate Provision of Services

Prior to September 1, 1993, there were two primary governmental agencies responsible for environmental protection services in Texas, the Texas Air Control Board ("TACB") and the Texas Water Commission ("TWC"). The two bodies were separate entities with their own boards or commissioners and policies but both received federal funds from the EPA. In order to facilitate their administrative operation, both the TACB and the TWC divided Texas into Regions or Districts (sub-sections) over which they maintained direct control. The TWC also previously underwent a consolidation in March 1992 with the Solid Waste Division of the Texas Department of Health, and is now in the Commission's Office of Waste Management as the Municipal Solid Waste Program to regulate municipal landfills.

On September 1, 1993, the two bodies were merged into a single unit, the Texas Natural Resource Conservation Commission, TNRCC. TACB became the Office of Air Quality within TNRCC. The TNRCC has changed the division of Regions in Texas from 12 (TACB) and 14 (TWC) to 15 but it, like its predecessors, still maintains direct control over these sub-sections since TNRCC's 15 Regional Managers are appointed by the highest officials in Lubbock's Central Office and follow strict guidance received directly and routinely from the TNRCC's Central Office executives in Austin. For all intents and purposes, the operation of the TNRCC has remained unchanged to that of the TACB and the TWC and accordingly while some of the substantive content of this administrative charge commenced prior to the creation of the TNRCC, the TNRCC as the primary existing environmental protection body, is cited as the responsible agency. Indeed, the State Legislature in 1991 specifically authorized creation of TNRCC to consolidate and improve environmental protection services in Texas, but J.M.N.A. believes the TNRCC is operating in essentially a very similar, if not identical discriminatory manner, as the TACB and the TWC did before for several decades. The TNRCC has continued to administer basically the same policies, rules and programs that the complainants allege are discriminatory and J.M.N.A. allege that there has been essentially no improvement or changes in the degree of discrimination since the TNRCC came into being on September 1, 1993. Indeed close to a majority of TNRCC personnel in Austin and the Field Offices are staff from the old TACB and TWC.

2. Examples of TNRCC Discriminatory Practices in Environmental Protection and Enforcement of Regulations: Specific Acts of Discrimination & Omissions

It is the position of the complainants that the foregoing, omissions, and procedural deficiencies on the part of the State and the TNRCC violates Title VI of the Civil Rights Acts of 1964 and 40 CFR 7.35 (b) and (c) in that they clearly have a discriminatory effect, if not also purpose, on people of color members of J.M.N.A., as well as on other people of color living and working in Lubbock. The TNRCC has not given appropriate consideration, if any, to its legal obligations under the foregoing authorities. Environmental inequity was brought up by members of J.M.N.A., but was not formally reviewed by the TNRCC in its permit decisions on any of Northeast Lubbock industrial district plants. The TNRCC alleges that it has no set of policies, rules, regulations or statutory requirements to require it to address requests such as those of J.M.N.A. to review disparate environmental hazards in communities of color. This is why these communities and neighborhoods are being selectively targeted. Citizens living in Northeast Lubbock already have to bear a heavy burden of harmful polluting facilities from decades of targeting, ineffective regulations, lax enforcement, and permit renewals, amendments and new permits that only serve to increase current disparities of environmental hazards in the area.

Conclusion

Based upon all the reasons set out above, it is clear that the State of Texas' and the TNRCC's environmental programs are designed and administered in a fashion that encourages siting, permitting and polluting activities by large industrial plants in areas that are largely people of color and low-income. Further it is clear that the City of Lubbock's health and environmental protection programs function in a similar manner to the TNRCC's. On behalf of the Jackson/Mahon Neighborhood Association, I urge the Office of Civil Rights to investigate these situations, and recommend to the President and Congress that the State of Texas, the TNRCC and the City of Lubbock be required to administer their respective health and environmental protection programs in a manner that does not discriminate against people of color or low-income citizens of the State of Texas and the Lubbock, Texas.

Further, the complainants urge your prompt attention to the TNRCC's and Lubbock's activities with regard to the Northeast Lubbock industrial district and related Travis County sources of pollution, and respectfully request your Office's assistance in securing the TNRCC's and Lubbock's full and continuous compliance with the foregoing authorities and remedying the effects of the discrimination that have already occurred for several decades.

In conclusion, the Jackson/Mahon Neighborhood Association and I, stand ready to provide you with additional information at our disposal. Please contact me should you have any questions concerning the matters set out in this Formal Complaint. Finally, on behalf of J.M.N.A., thank you for your consideration and attention. I look forward to your prompt response.

Sincerely yours,

Grover G. Jenkins

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